



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MELISSA BROWN, :

Plaintiff, :

-against- :

CAROLYN COLVIN, ACTING :
COMMISSIONER OF SOCIAL SECURITY, :

Defendant. :

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KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE

MEMORANDUM AND ORDER

13-CV-8934 (KNF)

On May 28, 2015, a judgment was entered, remanding the case to the Commissioner of Social Security. On June 29, 2015, the plaintiff's attorney, Aaron David Frishberg ("Frishberg"), filed a document entitled "Motion and Declaration," contending: "In the course of attempting to notify my client of this result last week, I received [a] telephone call in response to a letter I had sent to Melissa Brown from her adult son, Steven McWilliams. Mr. McWilliams informed me that Melissa Brown passed away on February 7, 2015." Frishberg requests: (1) "that Steven McWilliams be allowed by this Court, in his capacity as personal representative of Melissa Brown, as her next of kin, to substitute for Melissa Brown for the purpose of prosecuting the estate's claim for attorney's fees"; and (2) "an EAJA [the Equal Access to Justice Act] award of \$12,942.50."

A motion to substitute the estate of a deceased party and service of the statement of death may be made "either by the estate of the deceased party (presumably) acting through counsel for the estate) or by any other party, but not by the deceased party herself or himself (acting through counsel)." Al-Jundi v. Rockefeller, 88 F.R.D. 244, 246 (W.D.N.Y. 1980). Frishberg does not

contend that he is counsel to the plaintiff's estate, Steven McWilliams or any other person, except the presumably deceased plaintiff. Moreover, Frishberg's motion does not comply with Local Civil Rule 7.1 of this court. Accordingly, the motion, Docket Entry No. 38, is denied, without prejudice.

Dated: New York, New York
July 22, 2015

SO ORDERED:



KEVIN NATHANIEL FOX
UNITED STATES MAGISTRATE JUDGE